

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE CITY OF BLAINE, *et al.*,

Plaintiffs,

v.

GOLDER ASSOCIATES, INC., *et al.*,

Defendants.

No. C03-0813RSL

ORDER GRANTING IN PART
PLAINTIFFS' MOTION IN LIMINE
REGARDING GRANT STEWART'S
LAY OPINION TESTIMONY

This matter comes before the Court on "Plaintiffs' Motion in Limine Regarding Retrospective Opinion Testimony of Grant Stewart Regarding the Decision of Tony Mortillaro to Not Hire the Lummi to Monitor the Construction." Dkt. # 334.¹ The Court has already determined that evidence related to the City's failure to pay the Lummi is irrelevant to plaintiffs' contract claim and will be excluded for that purpose. Defendants argue, however, that the same evidence is admissible as it relates to the hold harmless provision of the Memorandum of Agreement. Because the City's decision to proceed with the excavation without a Lummi representative present may be relevant to the contributory negligence issue raised by the hold harmless provision, defendants will be permitted to question Mr. Stewart regarding that decision.

¹ This matter can be decided on the papers submitted by the parties. Plaintiffs' request for oral argument is DENIED.

ORDER GRANTING IN PART PLAINTIFFS'
MOTION IN LIMINE REGARDING
GRANT STEWART'S OPINION TESTIMONY

1 Whether Mr. Stewart will be permitted to provide opinion testimony regarding the wisdom of
2 Mr. Mortillaro's decision will depend on the question asked. The relevant issue is the City's
3 negligence at the time the decision was made: questions designed to elicit testimony on that
4 issue would be appropriate. Asking broad questions regarding whether Mr. Stewart regrets how
5 the decision not to hire the Lummi ultimately played out establishes nothing other than the fact
6 that Mr. Stewart would have liked to avoid this entire dispute: such information is neither
7 relevant nor helpful to the jury.

8
9 For all of the foregoing reasons, plaintiffs' motion to exclude the opinion
10 testimony of Grant Stewart is GRANTED in part and RESERVED in part.

11 DATED this 12th day of May, 2006.

12
13
14 

15 Robert S. Lasnik
16 United States District Judge
17
18
19
20
21
22
23
24
25